Decision for dispute CAC-UDRP-106153

Case number	CAC-UDRP-106153
Time of filing	2024-01-12 10:12:46
Domain names	boursobkonline.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Emile Massy

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

French trademark BOURSO, reg. no. 3009973, reg. date February 22, 2000.

French figurative trademark BOURSOBANK, reg. no. 4963901, reg. date May, 24, 2023.

FACTUAL BACKGROUND

BOURSORAMA is a company specialized in online financial products and services, operating in three core businesses: 1) online brokerage, 2) financial information on the Internet and 3) online banking. In France, BOURSORAMA has more than 5,4 million customers. The portal www.boursorama.com is the first national financial and economic information site and first French online banking platform.

The Complainant owns a number of domain names, such as <bourso.com>, registered since January 11, 2000, and <boursobank.com> registered since November 23, 2005.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(2) Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

1) RIGHTS

The Panel confirms that French trademark BOURSO, reg. no. 3009973, reg. date February 22, 2000 and French figurative trademark BOURSOBANK, reg. no. 4963901, reg. date May, 24, 2023 for i.a. Goods and Services in Nice class 35 (for i.a. Information processing equipment and computers. Computer software. Software, information software. Advertising. Business management. Commercial administration, Computerised advertising space rental. Insurance. Financial affairs. Telecommunications for financial operations and all business applications. Publication and listing of financial information. Publication of financial information services. Publication of financial information on the Internet. Computer consultancy)

The Complainant has to the satisfaction of the Panel provided evidence that the disputed domain name <boursobkonline.com> with the addition of “BK” and “ONLINE” is confusingly similar to the trademark BOURSO. “BK” is an abbreviation for “bank” and the addition of the word “ONLINE” does by no means change the overall impression of the designation as being connected to the Complainant’s trademark BOURSO. It entails likelihood of confusion between the disputed domain name and the Complainant, its

trademark and the domain names associated. Moreover, the addition of the term “BK” worsens the likelihood of confusion between the disputed domain name and the Complainant’s trademark BOURSO, as it directly refers to the Complainant banking activities online and its new corporate name BOURSOBANK.

2) Legitimate interest

The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BOURSO, or apply for registration of the disputed domain name.

The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

The disputed domain name points to an error page. The Respondent did not use the disputed domain name, and has no demonstrable plan to use the disputed domain name.

3) Bad faith

The Complainant's trade mark BOURSO, has been in use since 1995 and has a significant reputation in France and abroad in connection with online financial services.

Adding the terms “BK” and “ONLINE” to the trademark BOURSO by the Respondent in the disputed domain name is not coincidental, but obviously with the intention to create confusion with the Complainant's trademarks as it directly refers to the Complainant’s online activities, its corporate name BOURSOBANK, and its figurative trademark BOURSOBANK, reg. no. 4963901, reg. date May, 24, 2023.

The distinctiveness of the Complainant's trademarks BOURSO and BOURSOBANK and reputation, confirm that is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks (see WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.).

The Complainant contends that MX servers are configured which suggests that the disputed domain name may be actively used for email purposes. Please see CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address”).

The disputed domain name is not actively used

Following the decision Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org>) the apparent lack of active use of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does prevent a finding of bad faith.

As cumulative circumstances, indicative of bad faith the Panel establishes that no response to the complaint has been filed and the registrant's concealment of its identity and the implausibility of any good faith use to which the domain name may be put. Such circumstances are given in the present case. (see: CAC-UDRP-106128)

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **boursobkonline.com**: Transferred

PANELLISTS

Name	**Gie Van den Broek**

DATE OF PANEL DECISION 2024-02-08